

Megarina Sdn Bhd v Enersafe Sdn Bhd

A

HIGH COURT (KUALA TERENGGANU) — CIVIL SUIT NO 22-50 OF 2000
 NIK HASHIM J
 31 DECEMBER 2001

Civil Procedure — Jurisdiction — High Court — Claim against defendant in respect of goods sold and delivered by plaintiff to defendant's project in Terengganu — Defendant resided in Sarawak — Application to strike out statement of claim on ground that High Court in Terengganu had no jurisdiction to entertain claim — Whether High Court in Terengganu had jurisdiction to entertain plaintiff's claim — Courts of Judicature Act 1964 s 23(1)

B

Civil Procedure — Striking out — Statement of claim — Claim against defendant in respect of goods sold and delivered by plaintiff to defendant's project in Terengganu — Defendant resided in Sarawak — Whether High Court in Terengganu had jurisdiction to entertain plaintiff's claim — Whether defendant ought to make application to Chief Judges for order to transfer case to Sarawak under O 92 r 3A(1) of Rules of the High Court 1980 instead of making application to strike out plaintiff's claim — Courts of Judicature Act 1964 s 23(1)

C

D

The plaintiff's claim against the defendant was for a sum of money allegedly due to the plaintiff from the defendant in respect of goods sold and delivered by the plaintiff to the defendant at the latter's project on Paka, Terengganu. The defendant had a business address in Paka, Terengganu but resided in Miri at the material time. The defendant applied to strike out the plaintiff's writ and statement of claim under O 18 r 19 of the Rules of the High Court 1980 ('the RHC') on the ground that the High Court did not have the jurisdiction to entertain the plaintiff's claim. The senior assistant registrar dismissed the defendant's application. The defendant appealed.

E

F

Held, dismissing the appeal:

- (1) The four sub-paras (a), (b), (c) and (d) in s 23(1) of the Courts of Judicature Act 1964 ('the Act') should be construed disjunctively. Hence, a party instituting a proceeding in a High Court may do so if his case fell within any one of the sub-paras of s 23(1)(a), (b), (c) or (d) of the Act (see p 184A-B).
- (2) The plaintiff's cause of action was based on an agreement for the supply of construction material to the defendant's project in Paka, Terengganu. In addition, the defendant had a business address in Paka, Terengganu. As such, the plaintiff had clearly brought itself within s 23(1)(c) and (b) of the Act as the facts on which the action was based occurred in Terengganu. Therefore, the plaintiff was entitled to file its action at the Kuala Terengganu High Court and accordingly, this court had the jurisdiction to hear the plaintiff's action. However, the defendant was correct in its argument that the cause of action arose and the facts on which the

G

H

I

- A** action was based had also occurred in Miri, Sarawak. Therefore, it appeared that both the High Court at Kuala Terengganu and Sarawak had jurisdiction to hear the plaintiff's case (see p 184B-E).
- B** (3) What the defendant ought to have done was to make an application to the Chief Judges for an order to transfer the case to Sarawak under O 92 r 3A(1) of the RHC rather than to make an application to strike out the plaintiff's action (see p 184E-F).
- C** (4) The power of striking out a pleading under O 18 r 19 of the RHC could only be exercised when a claim on the face of it was obviously bound to fail. The plaintiff's case was however not such a case. Therefore, the defendant's application was devoid of merit (see p 185A).

[Bahasa Malaysia summary]

- D** Tuntutan plaintiff terhadap defendan adalah untuk sejumlah wang yang dikatakan terhutang kepada plaintiff daripada defendan berhubung barangan yang dijual dan dihantarkan oleh plaintiff kepada defendan di tapak projek plaintiff di Paka, Terengganu. Defendan mempunyai alamat perniagaan di Paka, Terengganu tetapi menetap di Miri pada masa matan. Defendan telah memohon untuk membatalkan writ dan pernyataan tuntutan plaintiff di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa untuk melayan tuntutan plaintiff. Penolong kanan pendaftar telah menolak permohonan defendan. Defendan telah membuat rayuan.
- E**

F **Diputuskan**, menolak rayuan tersebut:

- G** (1) Keempat-empat sub-perenggan (a), (b), (c) dan (d) dalam s 23(1) Akta Mahkamah Kehakiman 1964 (Akta tersebut') hendaklah ditafsirkan satu per satu. Justeru itu, satu pihak yang memulakan satu prosiding di Mahkamah Tinggi boleh berbuat demikian jika kes beliau terlingkung di bawah salah satu sub-perenggan s 23(1)(a), (b), (c) atau (d) Akta tersebut (lihat ms 184A-B).
- H** (2) Kausa tindakan plaintiff adalah berdasarkan satu perjanjian untuk bekalan bahan binaan ke tapak projek defendan di Paka, Terengganu. Tambahan lagi, defendan mempunyai alamat perniagaan di Paka, Terengganu. Oleh itu, plaintiff dengan jelas terangkum di bawah s 23(1)(c) dan (b) Akta tersebut kerana fakta-fakta di mana tindakan diasaskan berlaku di Terengganu. Dengan itu, plaintiff berhak untuk memfailkan tindakannya di Mahkamah Tinggi Kuala Terengganu dan sewajarnya, mahkamah ini mempunyai bidang kuasa untuk mendengar tindakan plaintiff. Namun begitu, defendan adalah betul dalam hujahnya bahawa kausa tindakan yang timbul dan fakta-fakta yang diasaskan dalam tindakan juga berlaku di Miri, Sarawak.
- I**

Justeru itu, ia kelihatan bahwa kedua-dua Mahkamah Tinggi di Kuala Terengganu dan Sarawak mempunyai bidang kuasa untuk mendengar kes plaintif (lihat ms 184B–E).

- (3) Apa yang defendan sepatutnya lakukan adalah untuk membuat satu permohonan kepada Hakim-Hakim Besar untuk satu perintah untuk memindahkan kes ke Sarawak di bawah A 92 k 3A(1) KMT dan bukan membuat satu permohonan untuk membatalkan tindakan plaintif (lihat ms 184E–F).
- (4) Kuasa untuk membatalkan pliding di bawah A 18 k 19 KMT hanya boleh digunakan apabila satu tuntutan pada dasarnya adalah jelas akan gagal. Kes plaintif bagaimanapun bukan kes sebegitu. Oleh itu, permohonan defendan tidak mempunyai merit (lihat ms 185A).]

[*Editorial Note*: The defendant had appealed to the Court of Appeal vide Civil Appeal No T–02–29 of 2002.]

Notes

For cases on jurisdiction of the High Court, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3724–3775.

For cases on striking out a statement of claim, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5631–5641.

Cases referred to

Fung Beng Tiat v Marid Construction Co [1996] 2 MLJ 413 (refd)

Malacca Securities Sdn Bhd v Loke Yu [1999] 6 MLJ 112 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 23(1)(a), (b), (c), (d)

Rules of the High Court 1980 O 18 r 19, O 92 3A(1)

SE Chow (Wong & Associates) for the plaintiff.

Venu Nair (Paul Cheah & Associates) for the defendant.

Nik Hashim J:

The facts

This is an appeal against the decision of the learned senior assistant registrar ('the SAR') who on 22 April 2001 dismissed with costs the defendant's application by way of summons in chambers filed on 3 December 2000 to strike out the plaintiff's writ and statement of claim under O 18 r 19 of the Rules of the High Court 1980 ('the RHC'), as disclosing no reasonable cause of action against the defendant within the jurisdiction of this High Court, on the ground that this High Court does not have the jurisdiction to entertain the plaintiff's claim.

- A** The plaintiff's claim against the defendant is for the sum of RM3,382,740.72, being the amount allegedly due to the plaintiff from the defendant in respect of goods sold and delivered by the plaintiff to the defendant at its project in Paka, Terengganu pursuant to an agreement dated 15 November 1996. At the material time, the defendant was having a business address at no 743 Jalan Besar, Kg Cacar Batu, 23100 Paka, **B** Dungun, Terengganu, but resides in Miri, Sarawak.

Contentions of the parties

Learned counsel for the defendant argued that this High Court lacks the jurisdiction to hear the plaintiff's claim for the following reasons:

- C** (i) the defendant resides in Miri, Sarawak. Therefore, s 23(1)(b) of the Courts of Judicature Act 1964 ('the Act') applies in favour of the defendant;
- D** (ii) all the invoices of the plaintiff were issued and effected in Miri, Sarawak and sent to the defendant for payment there in Sarawak. The failure by the defendant to pay the amount stated in the said invoices constituting the alleged breach of the agreement on the part of the defendant, occurred in Miri, Sarawak. In the premises, the cause of action and the facts on which the proceedings are based have accrued and occurred in Miri, Sarawak. Therefore, s 23(1)(a) and (c) of the Act apply in favour of the defendant. Thus, the High Court which has **E** the jurisdiction over this case is the High Court in Sabah and Sarawak.

Learned counsel for the plaintiff, on the other hand, submitted that the High Court of Malaya at Kuala Terengganu has the jurisdiction to hear the plaintiff's claim by virtue of s 23(1)(c) of the Act as the facts on which the proceedings are based exist in Terengganu, and in support of his submission **F** he cited *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112.

After hearing the submissions of both parties, I, on 28 November 2001, dismissed the appeal with costs and affirmed the decision of the learned SAR.

G *Findings of the court*

It is worth noting that the defendant's application in encl 6 is an application for an order to strike out the plaintiff's writ and statement of claim on the ground of the lack of jurisdiction by this court to hear the plaintiff's claim. Thus, in order to decide whether or not this court has the jurisdiction, this **H** court has to examine s 23(1) of the Act which reads as follows:

Subject to the limitations contained in Art 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

- I** (a) the cause of action arose, or
- (b) the defendant or one of several defendants resides or has his place of business, or
- (c) the facts on which the proceedings are based exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated,

A

within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

The above subsection has four subparas (a), (b), (c) and (d), and each of them is followed by a comma and the word 'or', and this means that they must be construed disjunctively. Thus, a party instituting a proceeding in a High Court may do so if his case falls within any one of the subparagraphs (see *Malacca Securities Sdn Bhd*).

B

The plaintiff's cause of action was based on a supply agreement for the supply of construction materials to the defendant's project in Paka, Terengganu. Further, the defendant was having a business address at no 743, Jalan Besar, Kg Cacar Batu, 23100 Paka, Dungun, Terengganu. These facts were not denied by the defendant. Thus, the plaintiff has clearly brought itself within s 23(1)(c) and (b) of the Act as the facts on which the action is based occurred in Terengganu and the defendant was having its place of business in Terengganu. I therefore hold that the plaintiff is entitled to file its action at Kuala Terengganu High Court and accordingly, this court has the jurisdiction to hear the plaintiff's action, even though the defendant is correct in its argument that the cause of action arose and the facts on which the action is based also occurred in Miri, Sarawak, coupled with the fact that the defendant resides there too. Thus, from the facts of this case, it appears that both the High Courts at Kuala Terengganu and Sarawak have the jurisdiction to hear the plaintiff's claim.

C

D

E

What the defendant ought to have done in this case is to have the case transferred to Sarawak. In this respect, learned counsel for the plaintiff is right in pointing out that the defendant should have resorted to O 92 r 3A(1) of the RHC by making an application to the Chief Judges for an order to transfer the case to Sarawak, rather than make an application to strike out the plaintiff's action, as it did in the instant case. The defendant's application was misconceived.

F

Order 92 r 3A(1) of the RHC states:

An order to transfer any proceedings from a High Court to another shall be made with the approval of the Chief Judges.

G

This new provision was introduced vide PU(A) 342 dated 21 September 2000, which came into force with effect from 22 September 2000. By its terms, the provision clearly provides for an administrative mechanism for the transfer of proceedings from a High Court Malaya to a High Court Sabah and Sarawak and vice versa.

H

Perhaps, O 92 r 3A(1) of the RHC was inserted in response to the Federal Court's decision in *Fung Beng Tiat v Marid Construction Co* [1996] 2 MLJ 413 at p 419, where Gopal Sri Ram JCA (delivering the judgment of the court) said:

I

... As presently advised, there is absent in any Federal legislation that confers power upon the one High Court to transfer proceedings to the other.

A The defendant had failed to make such an application based on the new provision. The power of striking out pleadings under O 18 r 19 of the RHC is too well known that it can only be exercised when a claim on the face of it is obviously bound to fail. The plaintiff's claim, however, is not such a case. Thus, I found the defendant's application devoid of any merit. In the circumstances, I made the orders accordingly.

B *Appeal dismissed.*

Reported by Lim Lee Na

C

D

E

F

G

H

I